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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: Nikolai Grigorievich Lyapko
Serial No: 10/031,161
Filed: 05/20/2002
Examiner: Quang D. Thanh
Group Art Unit: 3764
Title: APPLICATOR FOR USE IN REFLEXOTHERAPY

APPEAL BRIEF

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REAL PARTY IN INTEREST

The real party in interest is Nikolai Gregorovich Lyapko, the inventor of record.

RELATED APPEALS AND INTERFERENCES:

None.

STATUS OF CLAIMS

Claims 1-18 (cancelled).

Claims 19-34 (claims on appeal).

STATUS OF AMENDMENTS

The final rejection is dated June 7, 2005.

On September 7, 2005 appellant filed an Amendment-D.

The Advisory Action dated September 20, 2005 denied entry to Amendment-D, stating that the amendment has changed the scope of the claims requiring further consideration and/or search, for example, in claim 19 adding “an elastic base member in the form of a rectangular plate which is solid in the direction of thickness thereof” is a further limitation never before considered.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention provides a device for reflexotherapy having needles with thickened portions (heads) mounted in a base member while the base member is in a plasticized condition. The base material is brought to a state of fluidity and completely envelopes the surface of each needle and tightly clamps the surface of each needle during the process of the base material curing, i.e., in the formation of a solid base member, thereby ensuring rigid fixation of the needles in the base member and eliminating the possibility of either the needles deepening into the base or protruding therefrom or tilting about axes thereof. At the same time, such fixation of the needles in the base member does not cause any decrease in the applicator flexibility. Such arrangement provides stability of the needle positions under any loads during the use of the applicator. Moreover, the use of a solid base member eliminates the needs for two plates, and thereby allowing the thickness of the base member to be reduced and its elasticity improved. Specification, page 2, lines 11-23.

One such applicator device is shown in Fig. 1, and comprises a base member 1, preferably being elastic (e.g. rubber) and needles 2 with thickened portions 3 (heads) at one end of each needle 2, and a sharpened portion 4 at the opposite end of each needle 2. The needles are fixed in the base member 1 from the side of the thickened portion 3 and protrude from the surface 5 of the base member 1 from the side of the sharpened portions 4. The needles 2 are clamped in the base member 1 by means of hot or cold plasticization of the base member 1. Specification, page 8, lines 28-34.

Independent claim 19 (claim on appeal) is directed to a device for reflexotherapy (Fig. 1, 2, 3, 4, 5 or 6), comprising:

an elastic base member 1 being in plasticized condition in the course of heating and being an integral structure upon curing; and

needles 2 provided each with one squeezed thickened end 3 and one sharpened end 4, said

squeezed thickened ends 3 being imbedded in said elastic base member 1 when in said plasticized condition so that upon curing of said elastic base member 1 at least said squeezed thickened end 3 of each needle 2 is squeezed in said integral structure of said elastic base member 1, and said remaining sharpened end 4 of each needle 1 protrudes from said integral structure.

Specification page 2, lines 6-10, states that “according to the invention, the elastic base member is made solid in the direction of thickness thereof and consists of one layer or two layers integrally connected therebetween, the needles being mounted with thickened portions thereof in the body of the base member and clamped in said base member to form a solid base.” (Underscoring added for emphasis).

Original claim 1, lines 6-10, states that “the elastic base member is made solid in the direction of thickness thereof and consists of one layer or two layers integrally connected therebetween, the needles being mounted with thickened portions thereof in the body of the base member and clamped in said member to form a solid base.” (Underscoring added for emphasis).

The Abstract, lines 10-15 states: “The novel feature of the applicator consists in that the elastic base member is made solid in direction of its thickness, and consist of one layer or two layers integrally connected therebetween and the needles (2) are mounted with their thickened portions (3) in the body of the base member (1) and clamped in said member to form a solid base.” (Underscoring added for emphasis).

Independent claim 27 (claim on appeal) is directed to a device for reflexotherapy (Fig. 1, 2, 3, 4, 5, or 6), comprising:

an elastic base member 1 consisting of two layers (Spec., page 2, line 8; original claim 1, line 8; Abstract, line 12) joined together in plasticized condition by heating, and forming an integral structure upon curing; and

needles 2 provided with one squeezed thickened end 3 and one sharpened end 4 each, at least said sharpened end 4 of each needle 2 passing through an upper layer of said two layers (Spec., page 2, line 8; original claim 1, line 8; Abstract, line 12) of said elastic base member 1 and protruding therefrom, and said squeezed thickened end 3 of each needle 2 being disposed between said two layers (Spec., page 2, line 8; original claim 1, line 8; Abstract, line 12) and joined together with said two layers (Spec., page 2 line 8; original claim 1, line 8; Abstract, line 12), at least said squeezed thickened end 3 of each needle 2 being squeezed within said integral structure, and said squeezed thickened ends 3 being fastened substantially in an area of joint between said two layers (Spec, page 2, line 8; original claim 1, line 8; Abstract, line 12).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether the term “two layers” in claim 27 adds material which is not supported by the original disclosure.
2. Whether claims 19, 21, 23, 27, 29 and 31 are unpatentable under 35 USC 103 over Gelfer US 5,250,067 in view of Leupold US 3,923,064.
3. Whether claims 20, 22, 24-26, 28, 30, and 32-34 are unpatentable under 35 USC 103 over Gelfer US 5,250,067 in view of Leupold US 3,923,064, and further in view of Yoneda Japanese Patent 07100181.

ARGUMENT

1. Whether the term “two layers” in claim 27 adds material which is not supported by the original disclosure.

The final rejection, page 2, states: “The amendment filed 5-6-05 is objected to under 35 USC 132(a) because it introduces new matter into the disclosure. 35 USC 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: ‘two layers’ in claim 27.”

Appellant respectfully submits that this new matter rejection is improper.

Attention is respectfully directed to the following portions of the patent application as originally filed:

Page 2, lines 7-8, state “the elastic base member is made solid in the direction of thickness thereof and consists of one layer or two layers integrally connected therebetween,”;

claim 1 states “characterized in that the elastic base member is made solid in the direction of thickness thereof and consists of one layer or two layers integrally connected therebetween”; and

the Abstract states “The novel feature of the applicator consists in that the elastic base member (1) is made solid in the direction of its thickness and consists of one layer or two layers integrally connected therebetween,” (Underscoring added for emphasis).

MPEP 608.01(I) states that: “In establishing a disclosure, applicant may rely not only on the description and drawings as filed, but also on the original claims if their content justifies it”.

MPEP 608.01(I) also provides: “Where subject matter not shown in the drawing or described in the description is claimed in the application as filed, then such original claim itself constitutes a clear disclosure of the subject matter, and the claim should be treated on its merits, and requirement made to amend the drawing and description to show this subject matter. The claim should not be

attacked either by objection or rejection because this subject matter is lacking in the drawing or description. It is the drawing and description that are defective, not the claim.”

Appellant respectfully submits that, in any event, it is clear that the feature “two layers” is supported by the original disclosure as detailed hereinabove.

Appellant also respectfully submits that the holding of new matter may be petitionable or appealable. MPEP 608.04(c).

Moreover, appellant respectfully submits that the proper basis for the rejection of a claim amended to recite elements thought by the Examiner to be without support in the original disclosure, is Section 112, and not Section 132.

However, in the present case, it is also respectfully submitted that a 35 USC 112 rejection would have been inappropriate.

In this connection, appellant respectfully relies on *In re Max Otto Henri Rasmussen*, 650 F.2d 1212; 211 USPQ 323 (1981), wherein Chief Judge Markey states:

“The proper basis for rejection of a claim amended to recite elements thought to be without support in the original disclosure, therefore, is § 112, first paragraph, not § 132. The latter section prohibits [**6] addition of new matter to the original disclosure. It is properly employed as a basis for objection to amendments to the abstract, specifications or drawings attempting to [*1215] add new disclosure to that originally presented. Past opinions of this court, in cases in which a § 132 claim rejection was reviewed on a § 112 analysis, should not in future be viewed as having approved the employment of § 132 as a basis for claim rejection. The amended claims involved in those cases should have been rejected under § 112, first paragraph....

Conclusion

The phrase ‘adheringly applying’ being supported in the specification, rejection of [*1216] that claim under 35 USC 132, first paragraph is reversed. Rejection under the appropriate statutory provision, 35 USC 112, would have been inappropriate.”

2. Whether claims 19, 21, 23, 27, 29 and 31 are unpatentable under 35 USC 103 over Gelfer US 5,250,067 in view of Leupold US 3,923,064.

The final rejection, paragraph 6, states “Re claims 19, 21 and 23, Gelfer teaches a body treatment pad having a flexible base member 10 made of plastic material and a plurality of needles 19 each having a thickened end and a sharpened tip 23 (fig. 6) being tapered from the thickened end toward the sharpened end (fig. 6).”

Appellant respectfully traverses this.

Rather than disclosing a needle, Gelfer discloses an elongated bar 19 having a triangular cross-section, as viewed in Fig. 6. Gelfer, col. 4, lines 43-45.

The American Heritage Dictionary defines “needle” as “a fine, sharp projection, as a spine of a sea urchin or a crystal, or a sharp, pointed instrument used in engraving”.

Thus, it is clear that Gelfer elongated bar 19 is not a fine, sharp projection, as a spine of a sea urchin or crystal, or a sharp, pointed instrument used in engraving, and thus, Gelfer elongated bar 19 is not a needle.

Indeed, Gelfer itself refers to elongated bar 19 as a “block”. Gelfer, col. 4, lines 43-44.

Independent claim 19 on appeal requires “an elastic base member being in plasticized condition in the course of heating, and being an integral structure upon curing; and needles provided each with one squeezed thickened end and one sharpened end, said squeezed thickened end being

embedded in said elastic base member when in said plasticized condition so that upon curing of said elastic base member at least said squeezed thickened end of each needle is squeezed in said integral structure of said elastic base member and said remaining sharpened end of each needle protrudes from said integral structure”. (Underscoring added for emphasis).

Independent claim 27 on appeal requires: “an elastic member consisting of two layers joined together in plasticized condition by heating, and forming an integral structure upon curing; and needles provided with one squeezed thickened end and one sharpened end each, at least said sharpened end of each needle passing through an upper layer of said two layers of said elastic base member and protruding therefrom, and said squeezed thickened end of each said needle being disposed between two layers and joined together with said two layers, at least at squeezed thickened end of each needle being squeezed within said integral structure, and said squeezed thickened ends being fastened substantially in an area of joint between said two layers.” (Underscoring added for emphasis).

The final rejection, page 3, states that since the Gelfer base member 10 is made of plastic material and has sufficient flexibility (col. 3, lines 4-10), and therefore it has a certain degree of elasticity..

Gelfer states that sheet 10 can be canvas, or heavy cloth, or a thin sheet of non-woven plastic material; a prime consideration is that the sheet 10 has sufficient flexibility to conform to the contours of a person’s body, e.g., wrapped around a person’s arm or lying against a person’s back. Gelfer, col. 3, lines 7-12.

Appellant respectfully submits that the Gelfer sheet 10 being made of canvas or heavy cloth, or a thin sheet of non-woven plastic material is not an “elastic” base member, as required in appellant’s claims.

“Elastic” means it springs back to its original shape after being stretched.

The final rejection, page 3, concedes that Gelfer does not disclose the thickened end of the needle being embedded inside of the base member.

The final rejection, page 3, states that “Leupold teaches that a needle 8 may be embedded in a base material (see fig. 3).”

Appellant respectfully traverses this.

In contrast, appellant respectfully submits Leupold element 8 is not a needle; and also does not have a sharpened end. Leupold element 8 is a “pre-shaped part 8” (Leupold, col. 3, line 9), which has “a dull or rounded point” (Leupold, col. 4, lines 12-13, 18).

With regard to claims 27, 29 and 31, the final rejection, paragraph 7, also concedes that Gelfer as modified by Leupold does not disclose the two layers.

Also, none of the cited references discloses the “squeezed” feature of appellant’s claims.

In addition, appellant respectfully submits that Gelfer as modified by Leupold does not teach or make obvious the features recited in appellant’s claim 19, 21, 23, 29 or 31.

Appellant respectfully submits that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed Cir 1990); *In re Fritch*, 972F.2d 1260, 23 USPQ2d 1780 (Fed Cir 1992).

Appellant also respectfully submits that a statement that modifications of the prior art to meet the claimed invention would have been well within the ordinary skill in the art at the time the claimed invention was made because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prime facie* case of obviousness without some objective reason to combine the teachings of the references. Ex parte

Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter., 1993); *In re. Kotzab* 217 F.3d 1365, 1471, 55 USPQ2d 1313, 1318 (Fed Cir 2000). See also *Al-Site Corp. v. VSI International, Inc.*, 174F.3d 1308, 50 USPQ2d 1161 (Fed Cir 1999), holding that the level of skill in the art cannot be relied upon to provide the suggestion to combine references.

It is also respectfully submitted that Gelfer Figs. 5 and 6 do not disclose needles, as required by appellant's claims. In contrast, Gelfer discloses an elongated bar 19. Nevertheless, it is clear that the Gelfer elongated bar 19 is not a needle.

This deficiency in Gelfer is not supplied by Leupold, as indicated hereinabove.

Leupold also does not disclose a needle with a sharpened end, as required in appellant's claims. In contrast, Leupold discloses a pre-shaped part 8 which is not a needle, and which has a dull or rounded point (Leupold, col. 3, line 9; col. 4, lines 12-13, 18).

It should be noted that Leupold teaches away from the appellant's claimed invention. For example, Leupold teaches a ring-shaped holder having means defining a rigid pressure plate. Leupold, col. 4, lines 3-5.

But more importantly, appellant respectfully submits that Gelfer et al. and Leupold do not contain any justification to support their combination, much less in the manner proposed.

With regard to the proposed combination of Gelfer et al. and Leupold, it is well known that in order for any prior-art references themselves to be validly combined for use in a prior art § 103 rejection, *the references themselves* (or some other prior art) must suggest that they be combined. E.g., as was stated in *In re Sernaker*, 217 U.S.P.Q. 1,6 (C.A.F.C. 1983):

“[P]rior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining their teachings”.

That the suggestion to combine the references should not come from applicant was forcefully stated in Orthopedic Equipment Co. v. United States, 217 U.S.P.Q. 193, 199 (C.A.F.C. 1983):

“It is wrong to use the patent in suit [here the patent application] as a guide through the maze of prior art references, combining the right references in the right way to achieve the result of the claims in suit [here the claims pending]. Monday morning quarterbacking is quite improper when resolving the question of nonobviousness in a court of law [here the PTO]”.

As was further stated in Uniroyal, Inc. v Rudkin-Wiley Corp., 5 U.S.P.Q. 2d 2434 (C.A.F.C. 1988) “[w]here prior art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself...*Something in the prior art must suggest the desirability and thus the obviousness of making the combination.*” [Emphasis supplied].

In line with these decisions, the Board stated in Ex parte Levengood, 28 U.S.P.Q. 2d 1300 (P.T.O.B.A.&I. 1993):

“In order to establish a *prima facie* case of obviousness, it is necessary for the examiner to present *evidence*, preferably in the form of some teaching, suggestion, incentive or inference in the applied prior art, or in the form of generally available knowledge, that one having ordinary skill in the art *would have been led* to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention...That which is within the capabilities of one skilled in the art is not synonymous with obviousness...That one can *reconstruct* and/or explain the theoretical mechanism of an invention by means of logic and sound scientific reasoning does not afford the basis for an obviousness conclusion unless that logic and reasoning also supplies sufficient impetus to have led one of ordinary skill in the art to combine the teachings of the references to make the claimed invention... Our reviewing courts have often advised the Patent and Trademark Office

that it can satisfy the burden of establishing a *prima facie* case of obviousness only by showing some objective teaching in either the prior art, or knowledge generally available to one of ordinary skill in that art, that ‘would lead’ that individual ‘to combine the relevant teachings of the references.’ ...Accordingly, an examiner cannot establish obviousness by locating references which describe various aspects of a patent applicant’s invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done.”

In the present case, there is no reason given in the final rejection to support the proposed combination, other than the statement “it would have been obvious to one skilled in the art to embed the needles having a thickened end head within the base, as taught by Leupold, for the purpose of stabilizing the anchoring of the needles to the base, to thus prevent the needles from breaking off”.

However, the fact that the applied references each teach features aimed at solving different problems is not sufficient to gratuitously and selectively substitute parts of one reference (Leupold) for a part of another reference (Gelfer) in order to meet appellant’s novel claimed combination.

In view of the foregoing, it is respectfully submitted that claim 19 is patentable over Gelfer in view of Leupold.

The foregoing applies with greater force to claim 21, which depends from claim 19 and defines a more limited species of the claim 19 invention.

The foregoing distinctions apply with even greater force to independent claim 27, which further distinguishes over the combination of Gelfer and Leupold.

In particular, Gelfer in view of Leupold fails to make obvious:

“A device for reflexotherapy”; nor

“an elastic base member consisting of two layers joined together in plasticized condition by heating, and forming an integral structure upon curing”; nor

“needles provided with one squeezed thickened end and one sharpened end each”; nor

“at least said sharpened end of each needle passing through an upper layer of said two layers of said elastic base member and protruding therefrom”; nor

“said squeezed thickened end of each needle being disposed between said two layers and joined together with said two layers”; nor

“at least said squeezed thickened end of said needle being squeezed within said integral structure”; nor

“said squeezed thickened ends being fastened substantially in an area of joint between said two layers”,

as required by claim 27.

In view of the foregoing, applicant respectfully submits that claim 27 is patentable over Gelfer in view of Leupold.

It is respectfully submitted that the foregoing applies with even greater force to claim 29, which depends from independent claim 27, and defines a more limited species of the claim 27 invention.

There is no justification in Gelfer or Leupold, or in any other prior art separate from appellant’s disclosure, which suggests that these references be combined, much less be combined in the manner proposed in the final rejection.

Furthermore, the proposed combinations would not be physically possible nor operative.

Even if Gelfer and Leupold were to be combined in the manner proposed, the proposed combination would not include all of the features specified in of appellant’s claims 19, 21, 23, 27, and 29.

Also, the results achieved by appellant's invention are superior to and unsuggested by the applied references.

Moreover, up to now, those skilled in the art thought or were skeptical that the techniques used in appellant's invention were unworkable or presented an insuperable barrier.

Up to now, those skilled in the art thought or found the problem solved by appellant's invention was insoluble, that is, the invention converts failure into success. The failures of prior art workers indicate that a solution was not obvious.

Also appellant's invention is classified in a crowded art. Therefore, a small step forward should be considered significant.

The prior art lacks any suggestion that the references should be modified or combined in a manner required to meet the claims.

More importantly, the references do not teach what the final rejection relies upon them supposedly teaching.

Appellant's invention also solves a long-felt, long-existing, but unsolved need.

The final rejection has made a strained interpretation of the references that could be made only by hindsight.

Appellant's invention also solves a different problem than the problems addressed by the applied references.

Significantly, the final rejection does not present a convincing line of reasoning as to why the claimed subject matter as a whole, including its differences over the prior art, would have been obvious.

The prior art references do not contain any suggestion (expressed or implied) that they be combined, or that they be combined in the manner suggested.

Each reference is complete and functional in itself, so there would be no reason to use parts from or add or substitute parts to any other reference.

The references also take mutually exclusive paths and reach different solutions to solve different problems. Since they teach away from each other, it would not be logical to combine them.

The references themselves teach away from the suggested combinations.

Those skilled in the art would find it physically impossible to combine the references in the manner suggested.

It would be necessary to make modifications, not taught in the prior art, to combine the references.

Even if combined, the references would not meet the claims.

The combinations suggested requires a series of separate, awkward combinative steps that are too involved to be considered obvious.

3. Whether claims 20, 22, 24-26, 28, 30, and 32-34 are unpatentable under 35 USC 103 over Gelfer US 5,250,067 in view of Leupold US 3,923,064, and further in view of Yoneda Japanese Patent 07100181.

The distinctions and arguments set forth hereinabove are incorporated herein by reference thereto.

The final rejection, paragraph 8, concedes that “The device of Gelfer et al as modified by Leupold does not disclose lugs surrounding the needles and being disposed on the base member”, as required by claims 20 and 28, and the claims dependent thereon.

Appellant respectfully submits that the deficiency of the combination of Gelfer and Leupold is not supplied by Yoneda, because Yoneda does not disclose “lugs surrounding, contacting and enveloping stems of said needles” as set forth in claims 20 and 28.

However, the final rejection, paragraph 8, states that Yoneda discloses “a cone or pyramidal shaped needle (fig. 2 and 6) that could be modified in the form of a nail shaped needle 12 which includes an increased thickness 15, with a lug 13 (best seen in fig. 7 and 8)”.

The final rejection, paragraph 8, further states that “it would have been obvious to one skilled in the art to modify the needle of Gelfer as modified by Leupold to have lugs disposed on the base member and surrounding the needles, as taught by Yoneda, for the purpose of providing a lug to serve as stabilizing means that allows for increased retention of the needles.”

Appellant respectfully traverses these contentions based on the foregoing distinctions specified hereinabove, and the following additional distinctions.

Appellant agrees with the statement in the last OA to the effect that the device of Gelfer et al as modified by Leupold does not disclose lugs on the bases of the needles, that are enveloped by the base member.

However, in addition, the device of Gelfer as modified by Leupold also does not disclose needles having a squeezed thickened end squeezed in the integral structure of an elastic base member, nor an elastic base member consisting of two layers joined together in plasticized condition by heating and forming an integral structure upon curing.

Furthermore, applicant respectfully traverses the contention that Yoneda discloses a cone or pyramidal shaped needle (figs. 2 and 6) that could be modified in the form of a nail shaped needle 12 which includes an increased thickness 15, with a lug 13.

Yoneda Fig. 2 does not disclose a cone shaped needle. In contrast, Yoneda Fig. 2 discloses an acute projection 2 which has a through hole to pierce a needle for acupuncture, and the top of the needle is projected over the acute projection 2.

It is respectfully submitted that Yoneda Fig. 6 does not disclose a pyramidal shaped needle. In contrast, Yoneda Fig. 6 discloses an acute salient 8 having a through hole to pierce a needle for acupuncture, and the top of the needle is projected over the salient 8.

Gelfer, Leupold, and Yoneda do not contain any justification to support their combination, much less in the manner proposed.

There is no justification in Gelfer and Leupold and Yoneda, or any other prior art separate from appellant's disclosure, which suggests that these references be combined, much less be combined in the manner proposed in the final rejection.

Even if Gelfer and Leupold and Yoneda were to be combined in the manner proposed, the proposed combination would not possess all of the novel physical features specified in appellant's claims 20, 22-26, 28, and 30-34.

Furthermore, the fact that three references must be combined to allegedly meet claims 20, 22-26, 28 and 30-34 is further evidence of unobviousness.

CLAIMS APPENDIX

19. A device for reflexotherapy, comprising:

an elastic base member being in plasticized condition in the course of heating, and being an integral structure upon curing; and

needles provided each with one squeezed thickened end and one sharpened end, said squeezed thickened ends being embedded in said elastic base member when in said plasticized condition so that upon curing of said elastic base member at least said squeezed thickened end of each needle is squeezed in said integral structure of said elastic base member, and said remaining sharpened end of each needle protrudes from said integral structure.

20. The device as claimed in claim 19, wherein:

an external surface of said base member is provided with lugs surrounding said needles.

21. The device as claimed in claim 19, wherein:

said needles are made tapered in the direction from said thickened end toward said sharpened end thereof.

22. The device as claimed in claim 20, wherein:

said needles are made tapered in the direction from said thickened end toward said sharpened end thereof.

23. The device as claimed in claim 21, wherein:

said needles are made with thickened ends in the form of heads.

24. The device as claimed in claim 22, wherein:
said needles are made with thickened ends in the form of heads.
25. The device as claimed in claim 19, wherein:
said needles are made in the form of nails or drawing pins.
26. The device as claimed in claim 20, wherein:
said needles are made in the form of nails or drawing pins.
27. A device for reflexotherapy, comprising:
an elastic base member consisting of two layers joined together in plasticized condition by heating, and forming an integral structure upon curing; and
needles provided with one squeezed thickened end and one sharpened end each, at least said sharpened end of each needle passing through an upper layer of said two layers of said elastic base member and protruding therefrom, and said squeezed thickened end of each needle being disposed between said two layers and joined together with said two layers, at least said squeezed thickened end of each needle being squeezed within said integral structure, and said squeezed thickened ends being fastened substantially in an area of joint between said two layers.
28. The device as claimed in claim 27, wherein:
an external surface of said base member is provided with lugs surrounding said needles.

29. The device as claimed in claim 27, wherein:

said needles are made tapered in the direction from said thickened end toward said sharpened end thereof.

30. The device as claimed in claim 28, wherein:

said needles are made tapered in the direction from said thickened end toward said sharpened end thereof.

31. The device as claimed in claim 29, wherein:

said needles are made with thickened ends in the form of heads.

32. The device as claimed in claim 30, wherein:

said needles are made with thickened ends in the form of heads.

33. The device as claimed in claim 27, wherein:

said needles are made in the form of nails or drawing pins.

34. The device as claimed in claim 28, wherein:

said needles are made in the form of nails or drawing pins.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.

✓

REQUEST FOR ORAL HEARING

None.



CONCLUSION

For the foregoing reasons, appellant submits that the rejection of claims 19-34 is in error and should be reversed.

This Appeal Brief is accompanied by an Appendix which presents a clean copy of the claims involved in the appeal.

Appellant encloses herewith a form PTO-2038 for the Appeal Brief fee.

Favorable consideration and reversal of the Final rejection are earnestly requested.

Respectfully submitted,

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